IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1730 of 1984
With
FIRST APPEAL No. 1731 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
JASHPALSING RUGNATHSING SISODIA & 2 - Defendant(s)

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Appearance :

MS MAYA DESAI for Appellant(s) : 1,
MR KH BAXI for Respondent: 1 & 2 in FA 1730/84
MR AMRISH PANDYA for Respondents no.1to5 in FA 1731/84

MR VIBHUTI NANAVATI for Respondent no.8 in FA 1731/84

DELETED for Respondent : 2
MS HETVI SANCHETI for Respondent : 3 in FA 1730/84

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/09/2007

ORAL JUDGMENT

1. Ms.Maya Desai, learned counsel for the appellant in each of the appeal; Shri K.H.Baxi, learned counsel for the respondents no. 1 and 2 in First Appeal No. 1730 of 1984; Shri Amrish Pandya, learned counsel for the respondents no. 1 to 5 in First Appeal No. 1731/84; Shri Vibhuti Nanavati, learned counsel for the respondent no.8 in First Appeal No. 1731 of 1984 and Ms. Hetvi Sancheti, learned counsel for the respondent no. 3 in First Appeal NO. 1730 of 1984.

2. Gujarat State Road Transport Corporation, being aggrieved by the judgment and award dated 18th January, 1984 passed by the learned Motor Accident Claims Tribunal, Ahmedabad in M.A.C. Petitions No. 164 of 1981 and 20 of 1982, has filed First Appeals No. 1730 and 1731 of 1984.

3. The undisputed facts are that in a collision between S.T. bus and a rickshaw, Jaspalsing, driver of the rickshaw suffered various injuries, while occupant of the rickshaw, namely Kishanchand died. Jaspalsingh filed a claim for Rs.75,000/- while successors/dependents of

Kishanchand filed claim for recovery of Rs.1,92,000/-. On notice, driver and the GSRTC appeared before the Tribunal and submitted that the rickshaw driver was rash and negligent; despite knowing that bus was coming from the other side, without taking due care and caution he entered upon the road and dashed against the bus. They submitted that they were not answerable to the claims made by the claimants. After recording evidence and hearing the parties, learned Tribunal allowed the claim in favour of Jaspalsing in toto, but however, awarded a sum of Rs. 1,63,500/- only in favour of successors of Kishanchand. The GSRTC is now before this Court, submitting inter alia, that the awarded amount deserves to be reduced to 50%. It is submitted by the learned counsel for the appellant that from the facts, it would clearly appear that the driver of the rickshaw was negligent and without taking due care and caution, he was driving the vehicle. It is submitted that the driver of the rickshaw was the co-author of the accident, therefore, the

liability should be proportioned to 50% each.

4. Learned counsel for the respondents, however, submitted that the statements of the eye witnesses would not provide any solace to the appellant, because, driver of the S.T. bus had not stepped into the witness box nor has pledged his oath. According to them, driver of the S.T. bus would have been the best person to say that he also tried to exercise due care and caution and tried to avert or avoid the accident.

5. In case when some accident takes place between two vehicles, then, the driver of each vehicle should ordinarily step into the witness box to prove that he had exercised due care and caution. Statement of a witness would simply show that how he had witnessed the incident and how does he translate the said scene into words. A by-stander or an eye witness cannot say that what was the mental condition of the driver, how did he exercise his due care and caution and whether he was driving the vehicle at a particular place with moderate pace. Question of moderate speed and negligence would again be a

question of perception. In a crowded place, speed of five kilometers may be too excessive but on the highway, speed of 100 kilometers may be taken to be reasonable. In the present case, near a bus stand, if S.T. bus driver was driving the vehicle without taking care of the surroundings and does not step into the witness box shows that he had taken due care and caution, then, certainly, burden would not stand discharged. Taking into consideration the findings recorded by the Court below with which I am in general agreement and further taking into consideration that the driver of the S.T. bus did not step into the witness box, I hold that there is no scope for any interference in the present matter.

6. Each of the appeal is dismissed. However, there shall be no costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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